



21 BATTERY PARK AVENUE, SUITE 206
ASHEVILLE, NC 28801

Mary S. Walker, Regional Administrator
US EPA, Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 30303-3104

2018 0040 0000 0321 1121

70180040000003211126
8/14/2020

7018004
8/14/2020

3:46:17 PM

\$6.55 0
US POSTAGE
FIRST-CLASS
062S0010229389
FROM 28801



Route

Route
EPA Atlanta

Delivery Point

14T64 E

Route

Route
EPA Atlanta

Delivery Point

Atlanta

OFFICE OF REGIONAL COUN

1. **QUESTION**
 2. **ANSWER**
 3. **QUESTION**
 4. **ANSWER**
 5. **QUESTION**
 6. **ANSWER**
 7. **QUESTION**
 8. **ANSWER**
 9. **QUESTION**
 10. **ANSWER**
 11. **QUESTION**
 12. **ANSWER**
 13. **QUESTION**
 14. **ANSWER**
 15. **QUESTION**
 16. **ANSWER**
 17. **QUESTION**
 18. **ANSWER**
 19. **QUESTION**
 20. **ANSWER**
 21. **QUESTION**
 22. **ANSWER**
 23. **QUESTION**
 24. **ANSWER**
 25. **QUESTION**
 26. **ANSWER**
 27. **QUESTION**
 28. **ANSWER**
 29. **QUESTION**
 30. **ANSWER**
 31. **QUESTION**
 32. **ANSWER**
 33. **QUESTION**
 34. **ANSWER**
 35. **QUESTION**
 36. **ANSWER**
 37. **QUESTION**
 38. **ANSWER**
 39. **QUESTION**
 40. **ANSWER**
 41. **QUESTION**
 42. **ANSWER**
 43. **QUESTION**
 44. **ANSWER**
 45. **QUESTION**
 46. **ANSWER**
 47. **QUESTION**
 48. **ANSWER**
 49. **QUESTION**
 50. **ANSWER**
 51. **QUESTION**
 52. **ANSWER**
 53. **QUESTION**
 54. **ANSWER**
 55. **QUESTION**
 56. **ANSWER**
 57. **QUESTION**
 58. **ANSWER**
 59. **QUESTION**
 60. **ANSWER**
 61. **QUESTION**
 62. **ANSWER**
 63. **QUESTION**
 64. **ANSWER**
 65. **QUESTION**
 66. **ANSWER**
 67. **QUESTION**
 68. **ANSWER**
 69. **QUESTION**
 70. **ANSWER**
 71. **QUESTION**
 72. **ANSWER**
 73. **QUESTION**
 74. **ANSWER**
 75. **QUESTION**
 76. **ANSWER**
 77. **QUESTION**
 78. **ANSWER**
 79. **QUESTION**
 80. **ANSWER**
 81. **QUESTION**
 82. **ANSWER**
 83. **QUESTION**
 84. **ANSWER**
 85. **QUESTION**
 86. **ANSWER**
 87. **QUESTION**
 88. **ANSWER**
 89. **QUESTION**
 90. **ANSWER**
 91. **QUESTION**
 92. **ANSWER**
 93. **QUESTION**
 94. **ANSWER**
 95. **QUESTION**
 96. **ANSWER**
 97. **QUESTION**
 98. **ANSWER**
 99. **QUESTION**
 100. **ANSWER**



DAVIS & WHITLOCK

ENVIRONMENTAL LAW

21 BATTERY PARK AVENUE, SUITE 206
ASHEVILLE, NC 28801
TEL: 828-622-0044 • FAX: 828-398-0435
WWW.ENVIROATTORNEY.COM

GARY A. DAVIS
LICENSED IN NC, TN, CA
GADAVIS@ENVIROATTORNEY.COM

JAMES S. WHITLOCK
LICENSED IN NC
JWHITLOCK@ENVIROATTORNEY.COM

EMILY D. STEIN
LICENSED IN NY, NC (PENDING)
ESTEIN@ENVIROATTORNEY.COM

August 4, 2020

Via Certified Mail/Return Receipt Requested

Tom Bundros
Chief Executive Officer
Dalton Utilities
1200 V.D. Parrott Jr. Parkway
P.O. Box 869
Dalton, GA 30722-0869

Tom Bundros
Commissioner – Manager
Water, Light, and Sinking Fund
Commission of City of Dalton
1200 V.D. Parrott Jr. Parkway
P.O. Box 869
Dalton, GA 30722-0869

Richard E. Dunn, Director
Georgia Department of Natural Resources
Environmental Protection Division
2 Martin Luther King Jr. Drive, SE
14th Floor East Tower, Suite 1456
Atlanta, GA 30334-90000

James A. Capp
Chief, Watershed Protection Branch
Georgia Department of Natural Resources
Environmental Protection Division
2 Martin Luther King Jr. Dr.
Suite 1152 East
Atlanta, GA 30334

Ms. Mary S. Walker
Regional Administrator
US EPA, Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 30303-3104

Mr. Andrew Wheeler, Administrator
Environmental Protection Agency
Office of the Administrator
Mail Code 1101A
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Addendum to June 24, 2020 Notice of Intent to File Citizen Suit Pursuant to the Federal Clean Water Act

Ladies and Gentlemen:

The purpose of this letter is to notify Dalton Utilities and the Water, Light, and Sinking Fund Commission of the City of Dalton, Georgia (collectively "Dalton Utilities"), owner and operator of various wastewater collection/treatment facilities and the associated Riverbend Wastewater Land Application System ("LAS"), located on Riverbend Road in Whitfield and Murray Counties, Georgia, that Mr. Jarrod Johnson intends to file suit in sixty (60) days under 33 U.S.C. § 1365(a)(1) of the Federal Clean Water Act ("CWA") in Federal District Court against Dalton Utilities for additional violations of the CWA which have occurred and/or been discovered

since Mr. Johnson served his June 24, 2020 Notice of Intent to File Citizen Suit ("June Notice").¹ Like the violations in the June Notice, the additional violations of the CWA set forth in this Addendum arise out of illegal discharges of per- and polyfluoroalkyl substances ("PFAS") from the LAS into the Conasauga River and its tributaries, which also impact the downstream Oostanaula River, including "spills" of raw sewage likely containing PFAS from Dalton Utilities' wastewater collection/treatment facilities associated with the LAS into waters of the State and the United States.²

This letter also provides the required notice to the Environmental Protection Agency and the Georgia Department of Natural Resources. As required by 40 C.F.R. § 135.3(a), Mr. Johnson's address and telephone number are:

(b) (6)

As stated in the June Notice, Mr. Johnson should only be contacted through his legal counsel:

Gary A. Davis	F. Jerome Tapley	Ryals D. Stone
James S. Whitlock	Ryan Lutz	William S. Stone
DAVIS & WHITLOCK, P.C.	Brett Thompson	STONE LAW GROUP,
21 Battery Park Avenue, Suite	CORY WATSON, P.C.	Trial Lawyers LLC
206	2131 Magnolia Avenue South	589 College St.
Asheville, NC 28801	Birmingham, AL 35205	Blakely, GA 39823

Mr. Johnson is an owner and occupant of real property in Rome, Floyd County, Georgia, and receives his domestic water supply from the City of Rome Water and Sewer Division ("RWSD" or "City of Rome"). As set out in the June Notice, Mr. Johnson has a particular interest in protecting the water quality of the Conasauga River and its tributaries in and around, and downstream from, Dalton Utilities' LAS, as well as the Oostanaula River, and his injuries are redressable in a CWA citizen suit.

VIOLATIONS OF THE CLEAN WATER ACT

I. DISCHARGING POLLUTANTS TO SURFACE WATERS WITHOUT AN NPDES PERMIT

Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants from a point source to waters of the United States except in compliance with, among other conditions, an NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. The requirement for an NPDES Permit authorizing these discharges arose at the time that Dalton

¹ This Addendum further clarifies some violations set out in the June Notice based on additional information obtained since the mailing of the June Notice.

² Dalton Utilities Land Application Permit No. GAJ020056 defines a "spill" as "any discharge of raw sewage by a Publicly Owned Treatment Works (POTW) to the waters of the State."

Utilities first knew or should have known that pollutants were being discharged into surface waters, and each day since that time is a violation of the CWA.³

As set forth in the June Notice, Dalton Utilities has, since as early as 2006, and every day since at least June of 2015, been in continuous violation of the CWA, 33 U.S.C. § 1311, by discharging PFAS from the LAS, the sprayheads located thereon, and/or ditches and drainage channels flowing from the LAS, into the Conasauga River and/or tributaries thereto which constitute waters of the State of Georgia and the United States, without an NPDES Permit authorizing such discharges. Likewise, Dalton Utilities has also been in continuous violation of 33 U.S.C. § 1311 by discharging PFAS from the LAS, the sprayheads located thereon, and/or ditches and drainage channels that flow into the groundwater beneath the LAS, which is hydrologically connected to the Conasauga River and/or its tributaries, and constitutes the functional equivalent of a direct discharge to these surface waters.

On at least the following dates, analytical results from sampling of surface waters at the specified locations at and downstream from the LAS demonstrate that Dalton Utilities has illegally discharged, and continues to illegally discharge, PFAS from the LAS without a permit in violation of 33 U.S.C. § 1311:

- July 19-21, 2016 (Dalton Utilities)
 - July 20, 2016
 - Oostanaula River at Calhoun, GA water intake (Sample ID #9)⁴
 - July 21, 2016
 - Conasauga River at Tilton Bridge (Sample ID #2)
 - Holly Creek above confluence with Conasauga River (Sample ID #4)
 - Drowning Bear Creek (Sample ID #5)
 - Jobs Creek (Sample ID #6)
 - Swamp Creek (Sample ID #7)
- September 16-17, 2019 (EPA)⁵
 - September 16, 2019
 - Oostanaula River at Highway 156 near Calhoun, GA (Sample ID OOST2)
 - Oostanaula River at Armuchee Connector near Rome, GA (Sample ID OOST3)
 - September 17, 2019
 - Conasauga River downstream of Looper's Bend LAS, approximately 6.7 river miles downstream of Loopers Bridge Road (Sample ID CONA2)
 - Conasauga River at Tilton Bridge Road (Sample ID CONA3)
 - Conasauga River at Highway 136 near Resaca, GA (Sample ID CONA4)

³ GA. COMP. R. & REGS. § 391-3-6-.11(3) expressly provides that land application systems that result in point source discharge into surface waters, like the Dalton Utilities' LAS, "must obtain an NPDES permit."

⁴ Multiple samples taken by Dalton Utilities on July 20, 2016 in the Oostanaula River downstream of the LAS showed elevated levels of PFAS.

⁵ *Assessment of Resuspended Sediments as a Source of PFAS to the Upper Coosa River Basin* (EPA, 2019).

- Oostanaula River at Highway 3 in Resaca, GA (Sample ID OOST1)⁶

- June 18, 2020 (Rome, GA Sampling)

- Oostanaula River at Davis Loop Boat Launch
- Conasauga River at Tilton Bridge
- Coosa River at Lock and Dam

Furthermore, Dalton Utilities has, without a permit and in violation of 33 U.S.C. § 1311, discharged raw sewage from the various wastewater collection/treatment facilities associated with the LAS into waters of the State (“spills”), including the Conasauga River and tributaries thereto, on at least the following dates, as reported by the Georgia Department of Environmental Resources’ Environmental Protection Division (“GAEPD”):⁷

- December 2, 2015
 - 900 gallons to Unnamed Tributary to Tar Creek at 815 East Willow Park Drive
- December 2, 2015
 - 2,415 gallons to Unnamed Tributary to Mill Creek at West Tyler St. and Trammell Street
- February 21, 2016
 - 24,000 gallons to Mill Creek at 1310 C&L Drive
- February 24, 2016
 - 2400 gallons to McClellan Creek near 205 N. Tibbs Road Overpass and I-75
- March 29, 2016
 - 150 gallons to Hamilton Creek at 309 Elk Street
- July 15, 2016
 - 1200 gallons to Unnamed Tributary to Mill Creek near 420 West Tyler Creek
- November 8, 2016
 - 2500 gallons to McClellan Creek near 205 N. Tibbs Road Overpass and I-75
- December 18, 2016
 - 900 gallons to Unnamed Tributary to Mill Creek at 1212 Applewood Drive
- December 23, 2016
 - 525 gallons to Farrar Branch at 1510 Coronet Drive
- April 3, 2017
 - 5,235 gallons to Schwab Branch near 1360 Pleasant Grove Road
- June 15, 2017
 - 8,425 gallons to Mill Creek near 1615 Hickory Street
- June 21, 2017
 - 650 gallons to UT to Logan Creek at 226 Cherry Bark Way

⁶ EPA found that all of the foregoing samples contained significantly elevated levels of PFAS, including PFOA and PFOS above EPA’s 2016 Health Advisory, and also found that samples CONA2, CONA3, and CONA4 had not only the highest PFAS concentrations but also the highest diversity (8) of PFAS compounds detected.

⁷ The Georgia Water Quality Control Act is not comparable to the CWA, and thus any administrative enforcement action taken by GA EPD under the GWQCA cannot serve to preclude a CWA citizen’s suit. *Leakey v. Corridor Materials, LLC*, 839 F.Supp.2d 1340, 1350 (M.D. Ga. 2012); *Kendall v. Thaxton Road LLC*, 2013 WL 210892 at *4 (N.D. Ga. Jan. 18, 2013).

- September 22, 2017
 - 6,745 gallons to Mill Creek at Underwood Lift Station
- December 20, 2017
 - 6,060 gallons to Tar Creek at 1714 South Dixie Highway
- April 16, 2018
 - 1200 gallons to Tributary to Swamp Creek at lift station near 3580 Corporate Drive
- August 4, 2018
 - 2,325 gallons to Tributary to Mill Creek at 1500 Cleo Way
- August 22, 2018
 - 4200 gallons to Tributary of Mill Creek at 1228 N. Thornton Avenue
- February 22, 2019
 - 1300 gallons to Unnamed Tributary to Mill Creek at 514 Chattanooga Drive
- February 22, 2019
 - 200 gallons to Tar Creek at 907 Lakemont Drive
- February 22, 2019
 - 3065 gallons to McClellan Creek at 230 Tibbs Road
- May 11, 2019
 - 1460 gallons to Unnamed Tributary of McClellan Creek at 881 College Drive
- September 3, 2019
 - 7500 gallons to Unnamed Tributary to Mill Creek at corner of Piedmont Lane and Boundary Street
- October 30, 2019
 - 2,170 gallons to Mill Creek at 2300 Maddox Chapel Road
- October 31, 2019
 - 150 gallons to Unnamed Tributary of Mill Creek at intersection of Trammell and Clark Street
- November 9, 2019
 - 200 gallons to Unnamed Tributary of Mill Creek at intersection of N. Selvidge Street and Chattanooga Avenue
- January 1, 2020
 - 1625 gallons to unnamed Tributary of Mill Creek at 1625 Elkwood Drive
- June 17, 2020
 - 500 gallons to Unnamed Tributary of Mill Creek at 1812 Kimberly Park Drive

II. VIOLATIONS OF LAND APPLICATION SYSTEM PERMIT NO. GAJ020056

Dalton Utilities' Riverbend LAS is covered by and governed by the terms and conditions of Land Application System Permit No. GAJ020056, which became effective on December 1, 2015 and expired on March 31, 2020.⁸ As set forth below, Dalton Utilities has violated several conditions of its LAS Permit, each violation of which constitutes a separate violation of the CWA. 33 U.S.C. § 1319(d).

⁸ Dalton Utilities applied for reissuance of its LAS Permit in September of 2019; however, it is not clear if the Riverbend LAS Permit has been reissued at the time of this Addendum.

A. Condition II.A.12 – “No Discharge System”

Condition II.A.12 of the LAS Permit provides, in pertinent part, that the “wastewater and disposal system must be maintained as a no-discharge to surface waters” (emphasis added). As set forth in the June Notice and Section I, *supra*, Dalton Utilities has, since as early as 2006, and every day since at least June of 2015, including the specific instances identified in Section I of this Addendum, been in continuous violation of this effluent limitation by discharging PFAS from the Riverbend LAS into the Conasauga River and/or tributaries thereto, including through unpermitted “spills” of raw sewage likely containing PFAS into these surface waters.

B. Condition II.A.1 – Facility Operation

Condition II.A.1 of the LAS Permit provides, in pertinent part:

The permittee shall at times maintain in good working order and operate as efficiently as possible all treatment or control facilities (and related appurtenances) which are installed or used by the permittee to achieve compliance with the terms and conditions of this permit.

Dalton Utilities has violated this condition since at least June of 2015 by, among other acts/omissions: (1) failing to maintain and operate the LAS in such a manner as to prevent the discharge of PFAS to surface waters, including the Conasauga River and/or tributaries thereto, as set out in Sections I and II.A. of this Addendum; and (2) failing to maintain and operate the various wastewater collection/treatment facilities associated with the LAS in such a manner as to prevent the discharge raw sewage likely containing PFAS to surface waters (“spills”), as set out in Sections I and II.A of this Addendum.

C. Condition II.A.9 – Notice Concerning Endangering Waters of the State

Condition II.A.9 of the LAS Permit provides:

Whenever, because of an accident or otherwise, any toxic or taste or color producing substance, or any other substance which would endanger downstream users of the waters of the State or would damage property, is discharged into such waters, or is so placed so that it might flow, be washed, or fall into them, it shall be the duty of the person in charge ... at the time to forthwith notify EPD in person or by telephone of the location and nature of the danger, and it shall be such person’s further duty to immediately take all reasonable and necessary steps to prevent injury to property and downstream users of said water.

See also O.C.G.A. § 12-5-30.4. Dalton Utilities has violated this condition, and the Georgia Water Quality Control Act, since at least June of 2015 by, among other acts/omissions, failing to notify GAEPD of the location and nature of repeated and ongoing discharges of toxic PFAS from the LAS into waters of the State, including the Conasauga River and/or tributaries thereto, as set out in Sections I and II.A of this Addendum, and by failing to immediately take all reasonable and

necessary steps to prevent injury to property and downstream users of such water as a result of these illegal discharges.

III. VIOLATIONS OF THE GEORGIA WATER QUALITY CONTROL ACT

Pursuant to the Georgia Water Quality Control Act, O.C.G.A. § 12-5-30, *et seq.* ("GWQCA"), it is the declared policy of the State of Georgia that:

that the water resources of the state shall be utilized prudently for the maximum benefit of the people, in order to restore and maintain a reasonable degree of purity in the waters of the state and an adequate supply of such waters, and to require where necessary reasonable usage of the waters of the state and reasonable treatment of sewage, industrial wastes, and other wastes prior to their discharge into such waters.

O.C.G.A. §12-5-21(a). To effectuate this policy, the GWQCA provides, *inter alia*, that it "shall be unlawful to use any waters of the state for disposal of sewage, industrial wastes, or other wastes" O.C.G.A. § 12-5-29(a); *see also* GA. COMP. R. & REGS. § 391-3-6-.03(5)(a) ("All waters shall be free from materials associated with municipal or domestic sewage, industrial waste").

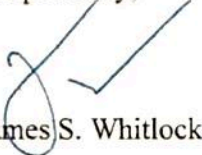
Dalton Utilities' conventional treatment technology cannot remove PFAS from its wastewater prior to application at the LAS. Thus, in addition to the violations of the CWA for discharging without a permit discussed in Section I of this Addendum, Dalton Utilities has also, since as early as 2006, and every day since at least June of 2015, violated the GWQCA, O.C.G.A. § 12-5-29(a), and the CWA, by using waters of the State for disposal of sewage, industrial wastes, or other wastes.

CONCLUSION

Thank you for your prompt attention to the ongoing, serious violations of federal law and permitting requirements. Please be advised that Mr. Johnson, at the expiration of sixty (60) days from the date of this Addendum, intends to file a citizen suit against Dalton Utilities under Section 505(a)(1) of the CWA, 33 U.S.C. § 1365(a)(1), for the violations set forth above. Pursuant to the CWA, we will seek civil penalties for the violations of up to \$55,800 per day for each violation, attorney's fees and costs, as well as an injunction against continued violations.

Any and all communication related to this matter should be directed to Gary A. Davis and James S. Whitlock at the address and telephone number listed at the top of this letter.

Respectfully,



James S. Whitlock

cc: William P. Barr
U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530-0001

Co-Counsel (*via email*)